

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

MICHAEL WAYMIRE,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION, CHAPTER 245,

Respondent.

Case No. SF-CO-580-E

PERB Decision No. 1448

June 25, 2001

Appearances: Michael Waymire, on his own behalf; California School Employees Association by Sonja Johnson, Attorney, for California School Employees Association, Chapter 245.

Before Amador, Baker and Whitehead, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (Board) on appeal by Michael Waymire (Waymire) of a Board agent's dismissal (attached) of his unfair practice charge.

The charge alleged that the California School Employees Association, Chapter 245 (CSEA) violated section 3543.6 of the Educational Employment Relations Act (EERA)¹ by failing to represent Waymire properly.

¹ EERA is codified at Government Code section 3540 et seq. Section 3543.6 states:

It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause a public school employer to violate Section 3543.5.

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or

After reviewing the entire record in this case, including the original and amended unfair practice charge, the dismissal and warning letters, Waymire's appeal and CSEA's response, the Board finds the dismissal letter to be free from prejudicial error and adopts it as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SF-CO-580-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Amador and Whitehead joined in this Decision.

otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

Dismissal Letter

April 27, 2001

Michael Waymire
2095 Highland Street
Seaside, California 93955

Re: Michael Waymire v. California School Employees Association, Chapter 245
Unfair Practice Charge No. SF-CO-580-E
DISMISSAL LETTER

Dear Mr. Waymire:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 19, 2000. You amended this charge on February 7, 2000. You allege that the California School Employees Association, Chapter 245 (CSEA) violated the Educational Employment Relations Act (EERA)¹ by failing to properly represent you. We discussed this charge on January 31 and on March 7, 2001.

I indicated to you in my attached letter dated March 9, 2001, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to March 16, 2001, the charge would be dismissed. You requested and were granted an extension of time to amend your charge.

On March 14, 2001, this office also received a document from you which was titled "PETITION FOR COURT ORDERED BINDING ARBITRATION". Because you referenced this unfair practice charge on that document, it was referred to me. In that document you request a "court order to proceed to binding arbitration..." However, PERB is not authorized to comply with your request for such an order. PERB is empowered to remedy unfair practice charges where a violation is found.

I received your amended charge on March 28, 2001. However, there were no facts which cured the deficiency which I described in my letter of March 9th. The actions taken by CSEA, which you allege were discriminatory and violate your right to fair representation, occurred outside the six month statutory limitations period. These actions include the initial denial, in 1998, of your request to proceed to arbitration on an issue involving Education Code section 88204. The renewal of that request in August 2000, does not make the CSEA refusal to pursue that matter a timely allegation. As set forth in my letter of March 9th, the EERA prohibits PERB from issuing a

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

complaint "based on an alleged unfair practice occurring more than six months prior to the filing of the charge". Because your charge is untimely, it must be dismissed.

In your amended charge, you state that, in my letter of March 9th, I incorrectly stated that you had requested that PERB reopen your former unfair practice charge, SF-CO-522-E. Please be aware that the error was inadvertent and I apologize for any confusion which may have resulted.

In your amended charge, you have alleged that CSEA and other entities have discriminated against you based on sex, religion and several other prohibited bases. PERB has no jurisdiction to assist you in those matters. You may wish to contact the California Department of Fair Employment and Housing.

You have also stated a request to have your case taken to an appropriate civil court outside the county of Monterey and state of California. PERB cannot provide you with advice or assistance with that request and can only suggest that you seek the assistance of a qualified attorney.

Right to Appeal

Pursuant to PERB Regulations², you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Regulations 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Regulation 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Regulation 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By _____
Bernard McMonigle
Regional Attorney

Attachment

cc: Sonja Johnson

BMC

Warning Letter

March 9, 2001

Michael Waymire
2095 Highland Street
Seaside, California 93955

Re: Michael Waymire v. California School Employees Association, Chapter 245
Unfair Practice Charge No. SF-CO-580-E
WARNING LETTER

Dear Mr. Waymire:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 19, 2000. You amended this charge on February 7, 2000. You allege that the California School Employees Association, Chapter 245 (CSEA) violated the Educational Employment Relations Act (EERA)¹ by failing to properly represent you. We discussed this charge on January 31 and on March 7, 2001.²

In your charge you have alleged that CSEA failed to represent you with regard to several grievances that you filed against your employer, the Monterey Community College District in 1996 and 1997. The grievances regarded eight alleged violations of the collective bargaining agreement. You also allege that in 1996 and 1997 CSEA representatives took reprisals against you by creating an intimidating and hostile work environment.

In 1998 you requested that CSEA pursue one of your grievances, over unpaid holiday pay under Education Code 88203 and 88204, to arbitration. CSEA did not do so. You renewed that request in August of 2000 and CSEA did not respond.

EERA section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

² You have also requested that PERB reopen and reconsider Unfair Practice Charge SF-CO-522 because of possible bad faith by your attorney. That case was dismissed by a PERB regional attorney in May of 1997. I am unable to reopen the charge. Any appeal of that dismissal, as well as request to excuse a late filing, must be addressed to the Board itself under PERB regulation 32300.

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March 9, 2001
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the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

As we have discussed, the actions taken by CSEA, which you allege violated your right to fair representation and were discriminatory, occurred outside the six month statutory limitations period. These actions include the original failure of CSEA to pursue your grievance on holiday pay to arbitration. Renewal of the request in August of 2000, does not make the CSEA's refusal to pursue the matter to arbitration timely. Because the charge is untimely, it must be dismissed.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 16, 2001, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Bernard McMonigle
Regional Attorney

BMC